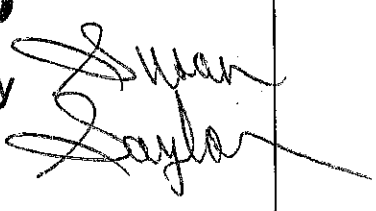


1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STERLING A. SMITH  
Deputy Attorney General  
4 State Bar No. 84287  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

**FILED**

Date 5/15/14 By 

8 **BEFORE THE**  
9 **STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2014-59

12 **MICHAEL RAND FIOLE**  
13 **2733 Country Club Blvd., Unit #177**  
**Stockton, CA 95204**

**ACCUSATION**

14 **Operator License No. 10327, Br. 2 and 3**

15 Respondent.

16  
17 Susan Saylor ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the  
20 Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of  
21 Consumer Affairs.

22 2. On or about October 19, 2000, the Board issued Operator License Number 10327 in  
23 Branch 3 to Michael Rand Fiole ("Respondent"). On or about June 12, 2008, the license was  
24 upgraded to include Branch 2. On or about January 4, 2010, Respondent became the Qualifying  
25 Manager of JIC Pest Control. On or about February 10, 2014, Respondent disassociated as the  
26 Qualifying Manager of JIC Pest Control. The license was in full force and effect at all times  
27 relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

28 ///

## JURISDICTION

3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

4. Code section 8625 states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

## STATUTORY AND REGULATORY PROVISIONS

5. Code section 8593 states:

The board shall require as a condition to the renewal of each operator's and field representative's license that the holder submit proof satisfactory to the board that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the board or equivalent activity approved by the board.

In lieu of submitting that proof, the licenseholder, if he or she so desires, may take and successfully complete an examination given by the board, designed to test his or her knowledge of developments in the field of pest control since the issuance of his or her license.

The board shall develop a correspondence course or courses with any educational institution or institutions as it deems appropriate. This course may be used to fulfill the requirements of this section. The institution may charge a reasonable fee for each course.

The board may charge a fee for the taking of an examination in each branch of pest control pursuant to this section in an amount sufficient to cover the cost of administering each examination, provided, however, that in no event shall the fee exceed fifty dollars (\$50) for each examination.

6. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

1 7. California Code of Regulations, title 16, section 1950 states, in pertinent part:

2 (a) Except as provided in section 1951, every licensee is required, as a  
3 condition to renewal of a license, to certify that he or she has completed the  
4 continuing education requirements set forth in this article. A licensee who cannot  
5 verify completion of continuing education by producing certificates of activity  
6 completion, whenever requested to do so by the Board, may be subject to disciplinary  
7 action under section 8641 of the code.

8 (b) Each licensee is required to gain a certain number of continuing education  
9 hours during the three year renewal period. The number of hours required depends  
10 on the number of branches of pest control in which licenses are held. The subject  
11 matter covered by each activity shall be designated as "technical" or "general" by the  
12 Board when the activity is approved. Hour values shall be assigned by the Board to  
13 each approved educational activity, in accordance with the provisions of section  
14 1950.5.

15 (c) Operators licensed in one branch of pest control shall gain 16 continuing  
16 education hours during each three year renewal period. Operators licensed in two  
17 branches of pest control shall gain 20 continuing education hours during each three  
18 year renewal period. Operators licensed in three branches of pest control shall gain 24  
19 continuing education hours during each three year renewal period. In each case, a  
20 minimum of four continuing education hours in a technical subject directly related to  
21 each branch of pest control held by the licensee must be gained for each branch  
22 license and a minimum of eight hours must be gained from Board approved courses  
23 on the Structural Pest Control Act, the Rules and Regulations, or structural pest  
24 control related agencies' rules and regulations.

### 25 COST RECOVERY

26 8. Code section 125.3 provides, in pertinent part, that the Registrar may request the  
27 administrative law judge to direct a licensee found to have committed a violation or violations of  
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
enforcement of the case.

### 29 BACKGROUND INFORMATION

30 9. In or about August 2012, Respondent submitted a license renewal application to the  
31 Board. On or about August 9, 2012, Respondent certified under penalty of perjury on the  
32 application form that he successfully completed 23 hours of continuing education during the  
33 renewal period of July 1, 2009, through June 30, 2012.

34 10. On or about November 28, 2012, January 9, 2013, and October 23, 2013, the Board  
35 sent Respondent written requests instructing him to provide the Board with copies of his  
36 continuing education certificates within fourteen (14) days. Respondent failed to submit  
37 proof/copies of his continuing education certificates as requested by the Board.  
38

1 **CAUSE FOR DISCIPLINE**

2 **(Failure to Verify Completion of Continuing Education)**

3 11. Respondent's operator license is subject to discipline under Code sections 8641 and  
4 8593, in that Respondent failed to comply with California Code of Regulations, title 16, section  
5 1950(c), by failing to submit verification of completing continuing education courses for the  
6 renewal period of July 1, 2009, through June 30, 2012, as requested by the Board on  
7 November 28, 2012, January 9, 2013, and October 23, 2013.

8 **OTHER MATTERS**

9 12. Code section 8620 provides, in pertinent part, that a Respondent may request that a  
10 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days,  
11 or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made  
12 at the time of the hearing and must be noted in the proposed decision. The proposed decision  
13 shall not provide that a civil penalty shall be imposed in lieu of a suspension.

14 13. Pursuant to Code section 8654, if discipline is imposed on Operator License Number  
15 OPR 10327, issued to Respondent, then Respondent shall be prohibited from serving as an  
16 officer, director, associate, partner or responsible managing employee of a licensee, and any  
17 licensee which employs, elects, or associates Respondent shall be subject to disciplinary action.

18 **PRAYER**

19 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Structural Pest Control Board issue a decision:

21 1. Revoking or suspending Operator License Number OPR 10327, issued to Michael  
22 Rand Fiolle;

23 2. Prohibiting Michael Rand Fiolle from serving as an officer, director, associate,  
24 partner, qualifying manager or responsible managing employee of any registered company during  
25 the period that discipline is imposed on Operator License Number OPR 10327, issued to Michael  
26 Rand Fiolle;

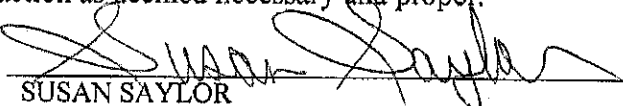
27 ///

28 ///

1           3.     Ordering Michael Rand Fiolle to pay the Structural Pest Control Board the reasonable  
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
3 Code section 125.3; and,

4           4.     Taking such other and further action as deemed necessary and proper.

5 DATED: 5/15/14

  
SUSAN SAYLOR  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant

9  
10 SA2014115543  
11 11325278.doc  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28